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**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

UNITED STATES OF AMERICA,

Plaintiff,

V.

**CLARENCE ABELDGAARD,
OCEANVIEW ENTERPRISES, INC.,
CLOYD MOSER and MODEB
INVESTMENTS.**

Defendants.

Case No. A-01-378 Civil (RRB)

**UNITED STATES' REQUEST THAT
CLERK OF COURT ENTER
DEFAULT AGAINST GERALDINE
BARLING PURSUANT TO FED. R.
CIV. P. 55(a) FOR FAILURE TO
ANSWER SECOND AMENDED
COMPLAINT**

Pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 55(a), the United States

respectfully requests that the Clerk of the Court for the United States District Court for the District of Alaska (“Clerk”) enter a default against defendant Geraldine Barling. More than a year after Ms. Barling was named as a defendant in the United States’ Second Amended Complaint, and approximately eight months after the expiration of the most recent extension of time for Ms. Barling to file her answer, Ms. Barling has failed to do so. See Docket No. 150 (Minute Order From Chambers RE: Motion for Addition[al] Time to File Answer); Docket No. 144 (Second Amended Complaint). Accordingly, for the reasons stated further below, the United States respectfully requests that the Clerk certify and enter default against Ms. Barling.

1. The United States filed the Complaint in this matter on December 21, 2001, naming Clarence Abeldgaard and Oceanview Enterprises, Inc. (“Oceanview”) as defendants. Docket No. 1. The Complaint alleged numerous violations of the Clean Water Act (“CWA”) and sought civil penalties and injunctive relief. Id.

2. The United States filed the First Amended Complaint on July 30, 2002, adding Cloyd Moser and Modeb Investments as defendants. Docket No. 19.

3. On July 6, 2005, the Court entered the Consent Decree With Defendants Cloyd Moser and Modeb Investments (“Consent Decree”), which resolved the liability of Cloyd Moser and Modeb Investments under the First Amended Complaint. Docket No. 112. The Consent Decree did not address the claims against Mr. Abeldgaard or Oceanview. Id.

4. On September 30, 2005, the United States filed its Motion to Amend Complaint to Add Geraldine Barling as a Defendant. Docket No. 139. The Court granted that motion on November 3, 2005. Docket No. 142.

5. After the United States promptly filed and served the Second Amended

Complaint in accordance with Fed. R. Civ. P. 4(e), counsel for Ms. Barling filed three motions for extensions of time to file an answer. See Docket Nos. 145, 147, 149. In order to facilitate settlement discussions with Ms. Barling, the United States did not oppose those motions. The Court granted those motions, resulting in a final due date of May 26, 2006. See Docket No. 150.

6. While the United States and Ms. Barling previously have been engaged in settlement negotiations, Ms. Barling has been extremely slow in responding to the United States' settlement proposals, and has not responded at all to the most recent proposal, which was sent on November 2, 2006. Moreover, the litigation has not been stayed, and the United States has continued to maintain all of its rights in the litigation. See Docket No. 155 (Status Report filed November 2, 2006) at 3; Docket No. 153 (Status Report filed August 23, 2006) at 3.^{1/}

7. To date, no answer has been filed on behalf of Ms. Barling.^{2/}

8. "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed. R. Civ. P. 55(a).

WHEREFORE, pursuant to Fed. R. Civ. P. 55(a), the United States hereby respectfully requests that the Clerk certify and enter in the above captioned matter a default against Geraldine

^{1/} Indeed, in June, 2006, the United States reminded counsel for Ms. Barling that Ms. Barling's answer had been due May 26, and encouraged counsel to immediately either file an answer or provide a settlement response and seek a request for an extension of time to file an answer in an effort to avoid default judgment proceedings under Fed. R. Civ. P. 55. See Docket No. 153 at 3.

^{2/} In its August 18, 2006 Minute Order From Chambers Requesting Status Report, the Court stated: "In reviewing this file, Defendant Barling had until May 26, 2006, in which to file an answer to Plaintiff's Second Amended Complaint (Docket 150). The file reflects no answer being filed." Docket No. 152 at 1. As of the filing of this request to enter default, the docket continues to indicate that no answer has been filed on behalf of Ms. Barling.

Barling.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mark A. Nitzynski, certify that on this January 25, 2007, I caused to be filed electronically the foregoing UNITED STATES' REQUEST THAT CLERK OF COURT ENTER DEFAULT AGAINST GERALDINE BARLING PURSUANT TO FED. R. CIV. P. 55(a) FOR FAILURE TO ANSWER SECOND AMENDED COMPLAINT STATUS REPORT with the Clerk of Court using the CM/ECF system, which sends a Notice of Electronic Filing to Darryl L. Thompson (counsel for Defendant Geraldine Barling), and that I caused hard copies of the foregoing to be served by United States mail on the following persons:

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Pro Se

/s/ Mark A. Nitzynski
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